

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
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4 Ricardo Luna-Dominguez,

5 Petitioner

6 v.

7 Brian Williams,

8 Respondent

2:15-cv-01203-JAD-CWH

Order Dismissing Petition and Closing
Case

[ECF No. 6]

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10 On July 20, 2015, I ordered § 2254 petitioner Ricardo Luna-Dominguez to show cause why
11 his 2015 petition challenging his 2008 Nevada state-court conviction and sentence should not be
12 dismissed as time-barred.¹ Having reviewed Luna-Dominguez's response to my order, I find that
13 Luna-Dominguez has not shown that he is entitled to equitable tolling, I dismiss his petition as time-
14 barred, and I direct the Clerk to close this case.

15 **Discussion**

16 Luna-Dominguez does not dispute that the § 2244(d) deadline to file his petition expired on
17 November 24, 2009—more than five years before he filed this petition. Luna-Dominguez responds
18 that he told his trial attorney that he wanted to appeal his conviction and was under the impression
19 that the attorney had filed an appeal on his behalf. Luna-Dominguez continues that he did not hear
20 from that attorney until May 2014, when Luna-Dominguez moved to have him relieved as counsel.
21 It was only then, according to Luna-Dominguez, that he discovered no appeal had been filed on his
22 behalf.

23 AEDPA's limitations period may be subject to equitable tolling if the petitioner shows that
24 extraordinary circumstances prevented him from filing a timely federal habeas petition and that he
25 diligently pursued his rights.² Equitable tolling may be warranted when an attorney abandons a
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27 ¹ ECF No. 5.

28 ² *Holland v. Florida*, 560 U.S. 631 (2010); *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir.2002).

1 petitioner while the petitioner is prosecuting a state-court challenge to his conviction.³ But an
2 attorney's abandonment will not warrant equitable tolling unless the petitioner reasonably relies on
3 counsel to prosecute the challenge and diligently seeks information from counsel about the status of
4 his case.⁴

5 For example, in *Gibbs v. Legrand* the attorney abandoned the petitioner and failed to notify
6 him that his state-court petition had been denied.⁵ Counsel also repeatedly ignored the petitioner's
7 attempts to contact him to inquire about the status of his petition.⁶ As a result, the petitioner did not
8 learn that his state petition had been denied until he inquired directly to the state court.⁷ But by that
9 time, the deadline for filing a federal habeas petition had expired.⁸ The Ninth Circuit reasoned that,
10 though the petitioner could have contacted the state court to determine the status of his petition
11 sooner, he had no reason to do so because he reasonably relied on his counsel's promise to keep him
12 informed about the status of his case.⁹ The Ninth Circuit found the petitioner's repeated (albeit
13 unsuccessful) attempts to contact his counsel to obtain information about his petition significant¹⁰
14 and concluded that the petitioner had shown that he was entitled to equitable tolling based on his
15 attorney's abandonment.¹¹

17 ³ See *Gibbs v. Legrand*, 767 F.3d 879, 887 (9th Cir.2014) (attorney's failure to inform petitioner of
18 state court denial of habeas petition constituted abandonment and warranted equitable tolling where
19 attorney guaranteed to keep petitioner informed of case status and where petitioner repeatedly
inquired about case status).

20 ⁴ *Gibbs*, 767 F.3d at 887.

21 ⁵ *Id.* at 886–88.

22 ⁶ *Id.*

23 ⁷ *Id.*

24 ⁸ *Id.*

25 ⁹ *Id.*

26 ¹⁰ *Id.*

27 ¹¹ *Id.*

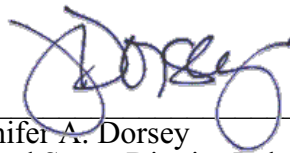
1 Unlike the petitioner in *Gibbs*, Luna-Dominguez has not shown that he made any attempt to
2 contact his trial attorney or the state court to inquire about the status of his appeal at any time
3 between November 2008 and May 2014. Thus, even taking his allegations as true, Luna-Dominguez
4 has not shown that he reasonably relied on trial counsel to pursue his appeal and that he diligently
5 inquired about the status of his case. Therefore, equitable tolling is not warranted, and Luna-
6 Dominguez's petition is dismissed as time-barred.

7 **Conclusion**

8 Accordingly, IT IS HEREBY ORDERED that **Luna-Dominguez's petition for writ of**
9 **habeas corpus [ECF No. 6] is dismissed with prejudice as time-barred, and a certificate of**
10 **appealability is DENIED.**

11 The Clerk of Court is instructed to serve a copy of the petition and this order on respondent
12 via the Nevada Attorney General, enter judgment for respondent and against Luna-Dominguez, and
13 CLOSE THIS CASE.

14 Dated this 23rd day of May, 2016.

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16 Jennifer A. Dorsey
17 United States District Judge
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